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March 2, 2012

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Hon. William Alsup
United States District Court, Northern District of California
450 Golden Gate Ave., Courtroom 8, 19th Floor
San Francisco, CA 94102

Re: *Oracle America, Inc. v. Google, Inc.*, Case No. 3:10-cv-03561-WHA

Dear Judge Alsup:

Oracle has just received Google's letter in opposition to Oracle's request for leave to file a motion to amend its infringement contentions and report with respect to the '205 patent. Google's opposition contains a number of misleading or false characterizations of Oracle's original infringement contentions, Oracle's proposed supplementation, and Prof. Mitchell's reports and testimony. Google's argument is not supported by any citations to those materials.

Here are just two examples. First, Google argues that "Oracle's infringement theory as to the '205 patent has always been directed at the time when an application is running, which Oracle has argued includes the time when the application is loaded into memory upon launch." That is false. With respect to the "generating, at runtime" limitation, which is all that Oracle's motion is about, Oracle's infringement theory has always been directed to the time when Android's ***dexopt*** is running.

Second, Google argues that Oracle's proposed supplementation "is a dramatic departure from Oracle's previous position and contradicts Oracle's earlier contentions, in support of which Oracle's expert argued in his report and at deposition that dexopt runs while an application is launched by a user." That is false. Oracle's original eight-page

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infringement chart for the "generating, at runtime" element stated (as did infringement expert

Prof. Mitchell) that the infringing optimizations "are done by the dexopt command, either in

the build system or *by the installer*." (Oracle 4/1/11 Infringement Contentions Exhibit B-2

at 12; Mitchell Opening Report ¶ 411 (emphasis added).) When Oracle adds in its two-

paragraph supplementation that dexopt runs while the virtual machine instructions of

Installer.java are executing, it is anything *but* a dramatic departure from its previous

position—it is the *same* as Oracle's previous position.

Oracle respectfully requests that the Court grant leave for Oracle to file its motion to

amend, so that the Court may make a decision on a full record, rather than through the

limited view offered by the précis letter process.

Respectfully submitted,

/s/ Michael A. Jacobs

Michael A. Jacobs